



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Environmental & Land Case 384 of 2012

IN THE MATTER OF SECTION 80(1) OF THE LAND REGISTRATION ACT, ACT NO.3 OF 2012

BETWEEN

JOHN KIONDO KAHUHU.....APPLICANT

VERSUS

DISTRICT LANDS REGISTRAR, KIAMBU.....RESPONDENT

RULING

The Applicant filed an Originating Summons application dated 13/6/2012 seeking orders that:

1. The Director of the Criminal Investigations Department of Kenya Police be directed to release the original certificate of freehold title issued in respect of property known as Githunguri/Gathangari/142, which is currently being held at the Criminal Investigations Department's headquarters for investigation under Kiambu Criminal Investigations Department Inquiry No. 5 of 2004, to the District Lands Registrar, Kiambu.
2. The District Lands Registrar, Kiambu be directed to rectify the Certificate of Freehold Title issued in respect of the property known as Githunguri/Gathangari/142 as follows:
 - a. The said Certificate of Freehold Title be rectified so as to correct the names of the registered proprietors, which are misspelt as "Muriu kabiro" and "John Kiondo Kahoho" respectively, so that they may henceforth appear as "Muui Kabiro" and "John Kiondo Kahuhu" respectively.
 - b. The said Certificate of Freehold Title be rectified to indicate the property is owned by the registered proprietors as Tenants in Common in the following shares:
 - i) Miniu Kabiro Ten Decimal Two (10.2) acres
 - ii) John Kiondo Kahuhu Two Decimal Five (2.5) acres
3. The District Lands Registrar, Kiambu be directed to rectify all relevant entries in the Kiambu District Land Register in respect of the property known as Githunguri/Gathangari/142 with the effect that henceforth:
 - a. The said Register entries shall show then names of the registered proprietors of the said property

to be “Muni Kabiro” and “John Kiondo Kahuhu” respectively.

b. The said Register entries shall indicate that the property is owned by the registered proprietors as Tenants in Common in the following shares:

- i) Muniu Kabiro Ten Decimal Two (10.2) acres
- ii) John Kiondo Kahuhu Two Decimal Five (2.5) acres

4. The District Lands Registrar, Kiambu be directed to issue afresh the Certificate of Freehold Title in respect of the property known as Githunguri/Gathangari/142 with the rectifications aforementioned.

5. The costs of this suit be provided for.

The application is premised on grounds that:

The Certificate of Freehold Title in respect of the property known as Githunguri/Gathangari/142 (hereinafter referred to as “the Property”) was issued while containing mistakes thereon as follows:

- i. The names of the registered proprietors are misspelt as “Muriu Kabiro” and “John Kiondo Kahoho” respectively, while the proper names of the registered proprietors are: “Muniu Kabiro” and “John Kiondo Kahuhu” respectively.
- ii. The said Certificate of Freehold Title does not indicate that the registered proprietors ought to hold the Property as Tenants in Common with Muniu Kabiro (now deceased) holding Ten Decimal Two (10.2) acres and John Kiondo Kahuhu holding Two Decimal Five (2.5) acres, and consequently suggests that the Property is subject to joint ownership which is not correct.

By reason of the aforesaid mistakes, there grew great mistrust and subsequently serious acrimony between the Applicant and the family of the Late Muniu Kabiro as a result of which the Applicant was reported to the CID by the son of the late Muniu Kabiro, one Stanley Muriu Muniu (now deceased), for investigation and possible prosecution on grounds of forgery and obtaining by false registration of ownership of the property. Following the aforementioned report to the CID, the Certificate of Freehold Title in respect of the said property was confiscated and retained by CID Officers under their file reference Kiambu CID Inquiry No, 5/2004 for investigation. The CID subsequently registered a restriction against the said property prohibiting dealings thereon. The Applicant has been under investigations for over 8 years and the same has not been resolved either way.

The delay in having the matter resolved by the CID has caused delay in the conclusion of the pending matters filed by the family of the Applicant’s co-proprietor (Nairobi High Court Succession Cause No. 389/1990 – In the Matter of the Estate of Muniu Kabiro) in view of the fact that the property is now deemed as subject of joint ownership. Finally that the Applicant and the representatives of the late Muniu Kabiro have by a mutually written agreement acknowledged the existence of the aforementioned mistakes contained in the certificate of title in respect of the property and are desirous of having them rectified. The Applicant reiterated the contents of the application. It was his disposition that they did not pick up the mistakes in the title when the same was issued, until 1989 when his co-proprietor died. The Applicant stated that he and the representatives of the family of the late Muniu Kabiro have made several return trips to the offices of the CID but there has not been any progress made in terms of the investigations for the past 8 years.

It was his disposition that both all parties have mutually agreed to have the title released from the custody of the CID and rectified to reflect the correct spellings of their names and indicate that the proprietors are joint tenants. Further that they would wish for the restriction registered on the property by the CID be removed forthwith.

The application is supported by an affidavit sworn on 13/6/2012 by the Applicant. There are also two

affidavits sworn by the representatives of the family of the late Munio Kabiro, namely: Maria Edna Muniu and Simon Muchai Kamau both swore on 13/6/2012. Both the representatives depose that they are aware of the filing of the Originating Summons application and that they have seen the exhibits annexed thereto. Further that they confirm that the family of the late Munio Kabiro is in agreement with the orders sought in the said application.

Before the Court can appropriately make a determination of the matters herein, it is proper for it to be in possession of the original title in respect of the property. The said original title is being held by the CID at their Headquarters Offices. In the interim therefore, I hereby direct that the Director of the Criminal Investigations Department of Kenya Police to release the original certificate of freehold title issued in respect of property known as Githunguri/Gathangari/142, to the Deputy Registrar of this Court within 14 days from the date of this ruling.

Further mention on 10/5/2013 for further orders.

Dated, signed and delivered this 26th day of April, 2013

L.N. GACHERU

JUDGE

In the Presence of:-

Mshweshwe for the Plaintiff/Applicant

None attendance for the Defendant/Respondent

Anne: Court Clerk

COURT.

Further mention 10/5/2013 for further orders.

L.N. GACHERU

JUDGE